

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

PUBLIC UTILITIES
COMMISSION

2009 SEP 18 P 2:12

FILED

In the Matter of the Application)

of)

MOLOKAI PUBLIC UTILITIES, INC.)

For review and approval of rate)
increases; revised rate schedules; and)
revised rules.)

Docket No. 2009-0048

**MEMORANDUM IN OPPOSITION TO
WEST MOLOKAI ASSOCIATION'S MOTION TO INTERVENE**

ATTACHMENT A

and

CERTIFICATE OF SERVICE

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OF THE STATE OF HAWAII

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**MEMORANDUM IN OPPOSITION TO
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I. INTRODUCTION AND SUMMARY OF ARGUMENTS

Pursuant to Hawaii Administrative Rules ("HAR") § 6-61-41(c), MOLOKAI PUBLIC UTILITIES, INC. ("MPU"), a Hawaii corporation, by and through its attorneys, Morihara Lau & Fong LLP, respectfully submits this Memorandum in Opposition to WEST MOLOKAI ASSOCIATION'S ("WMA" or "Movant") Motion to Intervene, filed on September 11, 2009 ("Motion to Intervene").¹

MPU opposes the Motion to Intervene on the grounds that WMA has failed to satisfy the intervention requirements set forth in HAR § 6-61-55, and that the allegations raised in WMA's Motion to Intervene are not reasonably pertinent to the

¹ HAR § 6-61-41(c) provides, in relevant part: "An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five days after being served the motion["]. HAR § 6-61-41(c) (emphasis added). HAR § 6-61-22 states, in relevant part: "When the prescribed time is less than seven days, Saturdays, Sundays, and holidays within the designated period shall be excluded in the computation." HAR § 6-61-22 (emphasis added). WMA's Certificate of Service indicates that the Motion to Intervene was mailed out to MPU on September 11, 2009. Actual receipt of the Motion to Intervene occurred on September 14, 2009. Thus, in light of this service date, MPU asserts that its memorandum in opposition is timely, pursuant to HAR §§ 6-61-22 and 6-61-41.

ratemaking proceeding and unreasonably broaden the issues already presented, contrary to HAR §§ 6-6-55(d) and (b). Specifically, WMA contends that any interests that WMA allegedly has regarding MPU's amended application and requests in the subject docket are not special and unique and are adequately and sufficiently represented by the Division of Consumer Advocacy ("Consumer Advocate"), who is statutorily required to represent and advance the interests of all consumers. In addition, WMA has not demonstrated or provided any reliable evidence that its intervention as a party (a) would contribute in any significant or material way to the development of a sound record regarding the reasonableness of MPU's proposed rate increase or (b) would not unduly delay the proceedings or unreasonably broaden the issues presented in this docket. In fact, MPU contends that WMA's allegations and statements made in its Motion to Intervene clearly indicate that its participation as a party or intervenor would unduly delay the proceedings and unreasonably broaden the pertinent ratemaking issues to be decided in this docket.

For these reasons and those set forth more fully herein, MPU respectfully requests that the Commission deny WMA's Motion to Intervene.

II. PROCEDURAL BACKGROUND

On June 29, 2009, MPU filed its Amended Application seeking Commission review and approval of rate changes and increases, revised rate schedules and rules, and other rate making matters as described therein ("General Rate Case Application"). Among other things, MPU is seeking to: (1) increase its rates and charges for its water service; (2) establish an Automatic Power Cost Adjustment Clause, which permits adjustments for electric costs during the year; (3) establish a Purchased Fuel

Adjustment Clause for the fuel component of its water costs; and (4) amend Rule XX of its Rules and Regulations to increase its reconnection charge.

On September 3, 2009, pursuant to HRS §§ 269-12 and 269-16, the Commission held a public hearing regarding MPU's General Rate Case Application at the Mitchell Pauole Center Conference Room on the island of Molokai.

On September 11, 2009, WMA filed its Motion to Intervene, in which it seeks to intervene and become a party to this docket.

III. DISCUSSION

MPU contends that WMA's Motion to Intervene should be denied for failure to meet the requirements for intervention set forth in HAR § 6-61-55.

It is well-established that intervention as a party in a Commission proceeding "is not a matter of right but is a matter resting within the sound discretion of the [C]ommission." See In re Application of Hawaii Elec. Co., Ltd., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975) ("In re HECO"); see also In re Application of KRWC Corporation, dba Kohala Ranch Water Co., Docket No. 2008-0283, Order (February 27, 2009); In re Application of Paradise Merger Sub, Inc., et. al., Docket No. 04-0140, Order No. 21226 (August 6, 2004); and In re Megumi Matsumoto dba Big Blue Hawaii, Docket No. 05-0134, Order No. 22122 (November 16, 2005).

HAR § 6-61-55 sets forth the requirements for intervention. HAR § 6-61-55(a) states, in relevant part, that "[a] person may make an application to intervene . . . by filing a timely written motion . . . stating the facts and reasons for the proposed intervention and the position and interest of the [movant]." HAR § 6-61-55(b) further states:

- (b) The motion shall make reference to:
- (1) The nature of the [movant's] statutory or other right to participate in the hearing;
 - (2) The nature and extent of the [movant's] property, financial, and other interest in the pending matter;
 - (3) The effect of the pending order as to the [movant's] interest;
 - (4) The other means available whereby the [movant's] interest may be protected;
 - (5) The extent to which the [movant's] interest will not be represented by existing parties;
 - (6) The extent to which the [movant's] participation can assist in the development of a sound record;
 - (7) The extent to which the [movant's] participation will broaden the issues or delay the proceeding;
 - (8) The extent to which the [movant's] interest in the proceeding differs from that of the general public; and
 - (9) Whether the [movant's] position is in support of or in opposition to the relief sought.

HAR § 6-61-55(b). In addition to satisfying all of the requirements listed above, HAR § 6-61-55(d) provides further that “[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented.” HAR § 6-61-55(d) (emphasis added); see also In re HECO, 56 Haw. at 262, 535 P.2d at 1104.

Further still, the Commission needs to insure “the just, speedy and inexpensive determination of every proceeding,” which is the purpose of the Commission’s Rules of Practice and Procedure as set forth in HAR § 6-61-1.²

² HAR § 6-61-1 (stating, in relevant part, that the rules should be “liberally construed to secure the just, speedy, and inexpensive determination of every proceeding”).

A. WMA Fails to Satisfy All But Two of the Requirements to Establish Intervention Provided in HAR § 6-61-55(b).

1. WMA Fails to Allege a Statutory or Other Right to Participate in the Hearing.

HAR § 6-61-55(b)(1) requires WMA to reference the “nature of the [movant’s] statutory or other right to participate in the hearing[.]” WMA makes no mention of a statutory or other right to participate and therefore fails to satisfy this legal requirement.

2 WMA Incorrectly Contends That the Ratemaking Proceeding is the Only Forum to Consider Alleged Water Problems.

HAR § 6-61-55(b)(4) requires WMA to reference the “other means available whereby the [movant’s] interest may be protected[.]”

The issues involved in a general rate case proceeding include, for example, whether: (1) the proposed rate increase is reasonable; (2) the proposed rates and charges are just and reasonable; (3) the projected operating expenses for the test year are reasonable; (4) the revenue forecasts for the test year are reasonable; (5) the projected rate base for the test year is reasonable; (6) the properties included in the rate base are used or useful for public utility purposes; and (7) the rate of return requested is fair. See, e.g., In re Application of Laie Water Co., Inc., Docket No. 2006-0502, Stipulated Procedural Order No. 23375 (April 19, 2009); In re Application of Waimea Wastewater Co., Inc., Docket No. 2008-0261, Stipulated Procedural Order (January 12, 2009); In re Application of KRWC Corporation, dba Kohala Ranch Water Co., Docket No. 2008-0283, Stipulated Procedural Order (February 11, 2009).

WMA contends that the ratemaking proceeding is the only forum to consider its alleged water problems (e.g., concerns about water quality, concerns about

MPU and its parent company's (Molokai Properties Limited) financial fitness and reliability, concerns about the condition of the system infrastructure) and specifically, whether the appointment of a receiver is in order. As evidenced by the types of issues germane to a ratemaking proceeding referenced above, WMA's issues are outside the scope of such a proceeding and would not add measurably or constructively to the instant ratemaking proceeding.

Denial of WMA's request for intervention does not preclude the Commission from considering WMA's issues of concern. The Commission has the authority to open a separate docket to explore issues such as a utility's fitness and reliability. For example, the Commission typically reviews financial "fitness" of a utility in connection with, among other things, the issuance of a certificate of public convenience and necessity (CPCN) or the sale or transfer of utility assets and/or operations and not as part of a ratemaking proceeding. See, e.g., In re Application of Mauna Lani STP, Inc., Docket No. 05-0229, Decision and Order No. 22299 (February 28, 2006).

Moreover, as discussed further below, allowing WMA to participate and raise issues or allegations regarding its alleged non-ratemaking related interests that could be the subject matter of other dockets or proceedings would unreasonably broaden the issues, unduly delay the proceeding, and deter the Commission from ensuring the "just, speedy and inexpensive determination" of this proceeding.³

By failing to recognize that a ratemaking proceeding is not the appropriate forum to consider issues unrelated to rate determination, and that the Commission may, in its discretion, open another docket to explore issues such as fitness and viability,

³ See HRS § 6-61-1; see also HRS § 269-16(d), which states, in relevant part, that the Commission shall "make every effort to complete its deliberations and issue its decision as expeditiously as possible[.]"

WMA failed to satisfy HAR § 6-61-55(b)(4) as there are other means available whereby WMA's interests may be protected.

3. WMA's Fails to Establish That Its Interests Will Not Be Represented By Existing Parties.

HAR § 6-61-55(b)(5) requires WMA to reference the "extent to which the [movant's] interest will not be represented by existing parties[.]"

Pursuant to HRS § 269-51, the Consumer Advocate is statutorily mandated to "represent, protect, and advance the interest of all consumers, including small businesses, of utility services." HRS § 269-51 (emphasis added). Further, HRS § 269-54(b)(7) provides the Consumer Advocate with the express authority to "[r]epresent the interests of consumers of utility services before any state or federal agency or instrumentality having jurisdiction over matters which affect those interests."

Further, the Commission has consistently held that the Consumer Advocate appropriately advances the interests of all consumers. See, e.g., In re Molokai Public Utilities, Inc., et. al., Docket No. 2008-0115, Order (August 8, 2008) ("Docket No. 2008-0115"); In re Application of Hawaiian Electric Co., Inc., Docket No. 2006-0386, Order No. 23366 (April 13, 2007); In re Hawaiian Electric Co., Inc., et. al., Docket No. 2006-0431, Order No. 23097 (December 1, 2006) ("Order No. 23097"); In re Application of Molokai Public Utilities, Inc., Docket No. 02-0371, Order No. 19955 (January 14, 2003).

Nevertheless, WMA claims that: (1) despite the Commission rejecting its request to participate in the previous MPU ratemaking proceeding,⁴ "now it is WMA's

⁴ Docket No. 2008-0115.

turn to be heard";⁵ (2) MPU services all of its members, including owners of vacant lots, homes, and condominiums in the West Molokai/Kaluakoi area so the proposed rate increase will cause financial hardship to all of its members;⁶ and (3) its specific interests will not be adequately represented by the Consumer Advocate because the Consumer Advocate is overworked and understaffed and "neither directly nor indirectly suffers the consequences of Commission decisions adversely impacting consumers."⁷ In contrast, WMA alleges that WMA's members' perspectives are based on first-hand experience.

In MPU's most recent ratemaking proceeding (Docket No. 2008-0115), the Commission denied WMA's motion to intervene on grounds that WMA's interests in the proceeding could be adequately represented by the Consumer Advocate. WMA attempted to distinguish its interests from those represented by the Consumer Advocate as follows:

[The Consumer Advocate] represents many of the common goals of all parties to this proceeding, namely provision of essential water and wastewater services over the long term at reasonable rates. However, because [the Consumer Advocate] must represent the interests of customers of [Wai'ola], which customers include Mauanaloa [sic], Kualapuu, south Kale and other adjacent areas in Central and West Molokai, [the Consumer Advocate] must divide its attention in representing WMA's interests. Further, [the Consumer Advocate] neither directly nor indirectly suffers the consequences of a Commission decision adversely impacting consumers. Only WMA has that perspective to offer the Commission. Further, WMA has access to information which will be of assistance to the Commission and to [the Consumer Advocate].

Docket No. 2008-0115 at 4 (brackets in original). The Commission found WMA's assertions that the Consumer Advocate could not adequately represent its interests

⁵ Motion to Intervene, at 7.

⁶ See id. at 5-6.

⁷ Id. at 8.

unpersuasive and without merit. In so finding, the Commission held that there was nothing in the record to preclude the Consumer Advocate from fulfilling its statutory mandate to represent all consumers in the proceeding. See id. at 6-7. It should further be noted that the Commission similarly denied WMA's request to intervene in Docket No. 2008-0116, a complaint proceeding initiated by the County of Maui. See County of Maui v. Waiola O Moloka'i et. al., Docket No. 2008-0116, Order (August 8, 2009).

WMA makes the same arguments in the present rate proceeding, adding only that (1) because the Consumer Advocate is understaffed and overworked, its best effort to represent WMA's members "may not be sufficient"⁸ and (2) that the Consumer Advocate has conflicts of interest.⁹ There is nothing in the record to preclude the Consumer Advocate from fulfilling its statutory mandate to represent all consumers in this proceeding nor has WMA presented any evidence to suggest that the Consumer Advocate will fail to carry out its statutory duties. WMA also fails to clearly state how the Consumer Advocate is conflicted out of this matter, and provides no support for its broad allegations of a conflict of interest. While WMA states, in support of a purported conflict of interest, that "[r]elative to the potential conflict of interest, major cost components of the two water utilities need to be re-allocated between the companies (or to the common sole shareholder), in order to more appropriately align variable costs with usage rates,"¹⁰ this statement simply does not establish a conflict for the Consumer Advocate.

⁸ Id.

⁹ Id. at 8-9.

¹⁰ Id. at 9.

The Consumer Advocate's statutory duties clearly extend to all consumers in this proceeding, including WMA. WMA has not shown any interest that is distinct nor unique from the consumers' interests, as all of MPU's customers stand to be financially impacted by the proposed rate increase. Under the circumstances, the Consumer Advocate, through its statutory mandate and lack of any financial self-interest, is effectively the party in the best position to balance the interests of the various customer classes (i.e., private and public customers) in a manner that is fair, just, reasonable, and in the public's best interest. The Commission previously determined in Docket No. 2008-0115 that WMA's alleged interests in that proceeding could be adequately represented by the Consumer Advocate. WMA has not provided any reason or substantiated a change in circumstances to warrant a different conclusion in this docket. Accordingly, WMA has failed to show that its interests will not be represented by existing parties in violation of HAR § 6-61-55(b)(5).

4. **WMA's Has Failed to Show How Its Participation Can Assist in the Development of the Record, Would Not Unreasonably Broaden the Issues Already Presented, and Would Not Unduly Delay the Proceedings.**

HAR §§ 6-61-55(b)(6) and (7) require WMA to show how its "participation can assist in the development of a sound record" and whether its "participation will broaden the issues or delay the proceeding[.]" As indicated above, HAR § 6-61-55(d) provides further that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." HAR § 6-61-55(d) (emphasis added); see also In re HECO, 56 Haw. at 262, 535 P.2d at 1104.

WMA claims to have "valuable information which will assist the Commission in fact-finding efforts."¹¹ Without specifying what that valuable information is, WMA implies that it has valuable information because it has been an "active party to [the Hawaii Commission on Water Resource Management's] CWRM's permitting process."¹² WMA also alleges it can assist in the development of the record because WMA members testified at the September 3, 2009 public hearing and have received correspondence from MPU regarding water conditions.¹³

MPU's claims are insufficient to demonstrate that it can meet the requirements of HAR §§ 6-61-55(b)(6) and (7). First, WMA was not a party to the CWRM contested case.¹⁴ Second, the Commission is privy to the testimony presented at the public hearing and therefore would not need to add WMA as a party to the case for that purpose.

Moreover, WMA has not demonstrated how its participation would assist the Commission in the development of a sound record regarding MPU's revenues, expenses, and/or other general ratemaking issues. The issues identified by WMA - CWRM's permitting process, leaks in the system, and the conditions of the water - are not issues that are reasonably pertinent to the rate case. See HAR § 6-61-55(d). Further, WMA has not shown any specialized interest or knowledge that the Consumer Advocate does not itself have or could not obtain through discovery with MPU. WMA's

¹¹ Id.

¹² Id.

¹³ Id. at 10.

¹⁴ See Minute Order Re: Status Conference, attached hereto as Attachment A, which lists the parties and participants in the CWRM case ("Attachment A").

assertion that it can assist the Commission in the development of the record, therefore, is without merit.

Consistent with the above, MPU contends that WMA has also failed to substantiate how its participation will avoid unreasonably broadening the issues in this case. As noted above, the general rate case issues in this proceeding involve the costs and revenues required for MPU to provide water service to its customers. WMA's stated concerns regarding water quality, financial fitness and reliability, and condition of the infrastructure are issues that are irrelevant to this ratemaking proceeding or are more properly addressed in other dockets or proceedings. Therefore, such an expansion of the issues beyond general ratemaking issues would unduly broaden and/or confuse the issues and cause potential delays. Moreover, it is apparent from WMA's Motion to Intervene that its purpose is to broaden the issues and delay the proceedings, in that WMA straightforwardly states that the Commission needs the additional time afforded for intervenors to address all of the issues.¹⁵

Accordingly, MPU contends that the Commission should not consider WMA's unsubstantiated allegations and/or factual representations, and should prohibit WMA from utilizing the intervention process to unreasonably broaden the ratemaking issues already presented and to unduly delay the proceedings in violation of HAR § 6-61-55(b)(6) and (7) and 6-61-55(d).

5. WMA Failed to Distinguish Its Interests From That of the General Public.

Pursuant to HAR § 6-61-55(b)(8), WMA must establish "the extent to which [its] interest in the proceeding differs from that of the general public."

¹⁵ See Motion to Intervene at 2 and 10.

WMA describes its “fundamental objective in this proceeding” as ensuring “the reliable provision of potable water at reasonable rates over the long-term.”¹⁶ WMA does not demonstrate how its interests are different from the customer interests already represented by the Consumer Advocate in this proceeding or the interests of the general public. Instead, WMA admits that its objectives are the same as the Commission’s and the Consumer Advocate’s.¹⁷ The only distinction that WMA makes is to say that its “members’ perspectives . . . are based on first-hand experience.”¹⁸ In other words, WMA fails to assert even an interest different from the Consumer Advocate, much less the general public.

Accordingly, WMA has not satisfied HAR § 6-61-55(b)(8) and by equating its and the Consumer Advocate’s fundamental objectives for the proceeding, WMA is essentially admitting to adequate representation by the Consumer Advocate.

In sum, WMA’s Motion to Intervene fails to meet the requirements set forth in HAR §§ 6-61-55(b)(1), (4), (5), (6), (7) and (8) and should be denied. As emphasized above, WMA has failed to state the nature of its right to participate in the hearing and has not presented sufficient evidence establishing that its interests are distinct from the interests statutorily represented by the Consumer Advocate. The concerns it states relating to its interests are either not reasonably pertinent to the resolution of the general rate case issues involved in this ratemaking proceeding or are those that the Consumer Advocate historically reviews and examines, pursuant to its obligations imposed under HRS § 269-54.

¹⁶ Id. at 11.

¹⁷ Id.

¹⁸ Id.

Therefore, MPU contends that the Consumer Advocate, which has been statutorily charged with representing all consumer interests before the Commission, will adequately represent WMA's interests and develop a sound record on the general rate case issues in this proceeding. There are clearly other means available whereby WMA's alleged interests can be protected, and it has failed to distinguish itself from other customers' interests that are generally represented as a whole by the Consumer Advocate. Moreover, finding that the Consumer Advocate will adequately represent the interests of MPU's customers in this proceeding, including WMA, is consistent with the "just, speedy and inexpensive determination of every proceeding" as established in HAR § 6-61-55(d).

IV. CONCLUSION

Based on the foregoing reasons and the authorities cited above, WMA's Motion to Intervene should be denied. Accordingly, MPU respectfully requests that the Commission issue an order denying WMA's Motion to Intervene based upon WMA's failure to satisfy the bases for intervention provided in HAR § 6-61-55.

DATED: Honolulu, Hawaii, September 18, 2009.



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Attorneys for Molokai Public Utilities, Inc.

ATTACHMENT A

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

In the Matter of the Contested Case Hearing) Case No. CCH-MO-97-1
on the Water Use Permit Application Filed by)
Kukui (Molokai), Inc.,) MINUTE ORDER RE: STATUS
) CONFERENCE; CERTIFICATE OF
) SERVICE
_____)

MINUTE ORDER RE: STATUS CONFERENCE

On March 3, 2008, a Status Conference was held in the Board of Land and Natural Resources' Conference Room. The Status Conference was attended by the Presiding Officer, Laura H. Thielen, via telephone; Linda Chow, Deputy Attorney General; Ken Kawahara, Deputy Director of the Commission on Water Resource Management; Kris Nakagawa, Esq. and Sandra Wilhide, Esq. representing the Applicants Molokai Public Utilities, Inc., Kaluakoi Water, LLC, and Molokai Properties Limited (hereinafter collectively referred to as "Molokai Properties")¹; Alan Murakami, Esq. and Camille Kalama, Esq. representing Intervenor Judy Caparida and Georgina Kuahuia; Jon Van Dyke, Esq. representing Intervenor Office of Hawaiian Affairs; and Clayton L. Crowell, Esq. representing Intervenor Department of Hawaiian Home Lands (hereinafter collectively referred to as "Intervenors").

During the course of the status conference the parties discussed the procedure to address the Motion to Continue Water Withdrawals filed by Molokai Properties and the hearing on remand on Molokai Properties' Application for a Water Use Permit, as it may be amended, and the scope of the hearing on remand. Based on the oral and written statements presented by the parties and the discussion during the status conference, the following schedule and procedure

¹ The Applicants are also required to file a separate pleading setting forth who is the successor in interest to the permittee, Kukui (Molokai), Inc. that will be the applicant on the amended permit application.

shall be applicable in this matter:

A. Motion to Continue Water Withdrawals

1. Applicant Molokai Properties will file a supplemental memorandum to its Motion to Continue Water Withdrawals which should address, at a minimum, the issues of water usage, including information regarding the current users of the water, the quantities currently being used, and whether waste is occurring, and its compliance with the eight (8) permit conditions previously imposed by the Commission on Water Resource Management ("Commission") on Applicant's predecessor in interest. Molokai Properties' supplemental memorandum shall be due no later than **Monday, June 2, 2008**.

2. Intervenor shall file a response to the Motion to Continue Water Withdrawals and supplemental memorandum by no later than **Thursday, July 17, 2008**.

3. No reply memorandum will be allowed at this time. In the event Molokai Properties deems it necessary to file a reply memorandum, it may file an ex parte motion requesting leave to file a reply memorandum within five days of the filing of Intervenor's response. The Intervenor shall have five days to file a response to the motion.

4. Oral argument on the Motion to Continue Water Withdrawals may be set by the Commission upon further order.

B. Scope of the Hearing on Remand

1. Intervenor shall file memoranda regarding their respective position on the scope of the hearing on remand. Intervenor should not discuss the criteria for issuance of a water use permit under §174C-49, Hawaii Revised Statutes (HRS) as it is assumed that the scope of the

hearing will include those issues.

The intervenors' memoranda should address, at a minimum, the issues raised in their Status Conference Statement including the relation of the permit application to the water transportation and delivery system (the Molokai Irrigation System or "MIS"), whether an environmental assessment pursuant to chapter 343, HRS, is required for the continued use of the MIS prior to holding the hearing on remand, and whether surface water permits must also be considered and issued in connection with the issuance of any ground water permit for water taken from Well #17. Intervenors memorandum shall be due no later than **Friday, May 2, 2008**.

2. Applicants Molokai Properties shall file a response to Intervenors' memoranda regarding the scope of the hearing on remand no later than **Monday, June 16, 2008**.

3. No reply memorandum will be allowed at this time. In the event Intervenors deem it necessary to file a reply memorandum, it may file an ex parte motion requesting leave to file a reply memorandum within five days of the filing of Molokai Properties' response. Molokai Properties shall have five days to file a response to the motion.

4. Oral argument on the Motion to Continue Water Withdrawals may be set by the Commission upon further order.

C. Motion to Substitute Intervenors


If Intervenors would like to pursue their request to add or substitute parties in the remand hearing, they will be required to file a separate motion and memorandum on this issue. This motion and memorandum will be at the same time as their memorandum regarding the scope of the hearing, **Friday, May 2, 2008**. Any response or opposition to this motion will be due no

later than Monday, June 16, 2008. Reply memoranda will be by leave of the Commission according to the procedure set forth above.

D. Hearing on Remand

The procedure regarding the further hearings on remand shall be decided pursuant to a further status conference once the above issues have been addressed by the Commission.

SO ORDERED this 16 day of March, 2008.



LAURA H. THIELEN
Presiding Officer

COMMISSION ON WATER RESOURCE MANAGEMENT

STATE OF HAWAII

In the Matter of the Contested Case Hearing) Case No. CCH-MO-97-1
on the Water Use Permit Application Filed by)
Kukui (Molokai), Inc.,) CERTIFICATE OF SERVICE
}

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and accurate copy of the foregoing document was duly served upon the following parties by U.S. First-class mail:

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DATED: Honolulu, Hawaii, March 10, 2008

Kathleen Oshiro

KATHLEEN OSHIRO

Secretary

Commission on Water Resource Management

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were duly served on the following party, by having said copies delivered as set forth below:

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DATED: Honolulu, Hawaii, September 18, 2009.



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